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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,740	08/31/2005	Christoph Kern	095309.56013US	9146

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CROWELL & MORING LLP  
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WASHINGTON, DC 20044-4300

EXAMINER
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MCPARTLIN, SARAH BURNHAM

ART UNIT	PAPER NUMBER
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3636

MAIL DATE	DELIVERY MODE
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10/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/527,740

Applicant(s)

KERN ET AL.

Examiner

Sarah B. McPartlin

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-11, 13-17 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-11, 13-17 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 12, 2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Regarding claim 11, the phrase "sheet-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "sheet- like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 9-10 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kashiwamura et al. (4,655,505). With respect to claim 9, Kashiwamura et al. disclose a vehicle seat (S) comprising: a seat cushion (unlabeled), a seat back (unlabeled), a plurality of individually pressurizable elements (1)(2)(3)(4)(5)(6)(7)(8)(9)(10) distributed over substantially an entire surface of at least one of the seat back and the seat cushion for adjusting a seat contour of said vehicle seat (S); and a controller (41) for pressurizing individual pressurizable elements; wherein the controller (41) is configured to provide different massage effects, for example "by varying the air pressures to be filled into the air bags in a certain pattern according to the thus detected driving time, for instance every 30 minutes, the body pressure distribution of the driver may be varied and the fatigue of the driver may be reduced" (column 10, lines 33-38) and "by using a relatively short period or high frequency, it is possible to effectively reduce the fatigue of the driver by applying massage to him" (column 10, lines 50-53); and the pressurizable elements are cushion-like elements which are small in relation to a surface of the seat contour, as is best depicted in Figure 1, and are actuatable individually via lines (25) in order to change the seat contour in a substantially localized manner.

With respect to claim 10, a desired seat contour can be set by the pressurizable elements (1) to (10) which are individually actuatable and the controller (41). Setting the desired seat contour involves the MEMO sub-routine discussed in column 6, lines 3-35.

The pressurizable elements are actuatable via respective separate lines (25), which are brought together at valve unit (24) in a manner such that they are bunched together in the direction of the controller (41) as best depicted in Figure 1.

With respect to claim 14, the elements are pressurized pneumatically by way of a "motor-driven air pump 27" (column 3, line 64).

With respect to claim 15, the controller (41) is adapted for carrying out a multiplicity of pre-set and individually settable massage functions. Some of the pre-set functions including periodically increasing or decreasing the air pressure in the pressurizable elements to alert a dozing driver or by providing massage in relatively short period or high frequency as disclosed in column 10, lines 28-52. Individually settable massage functions are performed by using UP and DOWN keys as disclosed in column 5, lines 34-68.

With respect to claim 16, a plurality of preselected settings of the seat contour can be stored by means of the controller (41) as described by using the MEMO function in column 6, lines 3-13.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 13, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashiwamura et al. (4,655,505) in view of Thomas et al. (6,212,719). With respect to claims 11, 13 and 17-20, Kashiwamura et al. disclose all claimed elements with the exception of pressurizable elements and lines which are fixed on a sheet-like support insert or sheet carrier inserted below a covered lining.

Thomas et al. disclose a plurality of pressurizable elements (28), which are pressurized via a series of lines (38). Pressurizable elements (28) and lines (38) are fixed on a support insert (26). Support insert (26), pressurizable elements (28) and lines (38) are positioned below a covered lining (16) shown in Figure 1.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to position on the pressurizable elements (1) to (10) disclosed by Kashiwamura et al. on an insert (26) and place the insert between a cover and a lined upholstery layer as taught by Thomas et al. Such a construction provides the massaging benefits of the Kashiwamura et al. device while concealing the mechanisms used to create the massaging effect and also helps prevent the mechanisms from shifting out of place within the seat structure.

### ***Response to Amendment/Arguments***

8. The amendment filed on October 12, 2007 has been considered in its entirety.

Applicant argues that the pressurizable elements 1 through 10 disclosed by Kashiwamura et al. are not in any sense punctiform elements distributed over substantially the entire seating surface. The Examiner contends that the pressurizable

elements 1 through 10 are significantly smaller than the surface area of the seat as a whole. Therefore, they function to provide punctiform support. Furthermore, the Examiner contends that the elements are distributed over substantially the entire seating surface given that they extend from the top of the backrest to the front of the seating portion and from one side of the seat to the other. The Examiner maintains that this configuration of pressurizable elements is "distributed over substantially the entire seating surface." Applicant further argues that the Thomas et al. patent does not teach individual pressurization. Thomas et al., however, is only relied upon for his teaching of the location of pressurizable elements beneath a covered lining and on a sheet-like support element. Kashiwamura discloses elements that are individually pressurizable. All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. For example, the pressurizable elements disclosed by Kashiwamura could have been placed on a sheet-like insert and positioned beneath a covered lining. In doing so, the installation of the pressurizable elements would have been simplified and the seat occupant would feel the support of the pressurizable elements without feeling the actual structure.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah B. McPartlin whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah B. McPartlin/  
Patent Examiner  
Art Unit 3636

SBM  
October 26, 2007